

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-8441, Marion County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF
	)	APPROPRIATION AND
	)	SUBSTITUTION OF SUPPLEMENTAL
	)	GROUND WATER RIGHTS FOR
	)	PRIMARY SURFACE WATER RIGHTS

**Authority**

ORS 537.705 and 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. ORS 540.524 provides that the holder of both a primary surface water right certificate and a supplemental ground water right certificate or permit may substitute the supplemental right or permit from a ground water source for a primary water right from a surface water source. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

DAVID AND KATHY LECOMPTE  
9785 PORTLAND ROAD NE  
SALEM, OREGON 97305

**Findings of Fact**

***Background***

1. On February 18, 2000, David and Kathy LeCompte, filed an application to substitute supplemental ground water rights under Certificates 36092 and 47936 for primary surface water rights under Certificates 34192, 36093, and 47941. The Department assigned the application number T-8441.
2. On July 7, 2003, the applicants, by their attorney, Martha O. Pagel, amended the application to include an additional point of appropriation for the rights described by Certificates 36092 and 47936.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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3. On September 22, 2006 and November 22, 2006, the applicants, by their attorney, Martha O. Pagel, removed 10.0 acres described by Certificates 47941 and 47936 from the transfer application.

4. The portion of the first right to be transferred is as follows:

**Certificate:** 36092 in the name of RALPH A. AND MARIAN B. JACK (perfected under Permit G-3812)

**Use:** SUPPLEMENTAL IRRIGATION of 27.3 ACRES

**Priority Date:** SEPTEMBER 16, 1967

**Rate:** 0.144 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL in the JEFF CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	1 E	WM	3	NE NE	520 FEET SOUTH AND 70 FEET WEST FROM THE NE CORNER OF SECTION 3.

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 E	WM	34	SE SE	6.4
8 S	1 E	WM	3	NE NE	20.9

5. The portion of the second right to be transferred is as follows:

**Certificate:** 47936 in the name of ROBERT N. AND MARLENE A. JACK (perfected under Permit G-6370)

**Use:** SUPPLEMENTAL IRRIGATION of 1.9 ACRES

**Priority Date:** JUNE 25, 1975

**Rate:** 0.09 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL in the SILVER CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	1 E	WM	3	NE NE	1	520 FEET SOUTH AND 70 FEET WEST FROM THE NE CORNER OF SECTION 3

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	1 E	WM	2	NW NW	4	1.9

6. Application T-8441 proposes an additional point of appropriation for the rights described by Certificates 36092 and 47936 approximately 30 feet West from the existing authorized point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	1 E	WM	3	NE NE	525 FEET SOUTH AND 100 FEET WEST FROM THE NE CORNER OF SECTION 3.

7. The ground water right evidenced by Certificate 36092 is supplemental to primary irrigation surface water rights evidenced by Certificates 34192 and 36093.
8. The ground water right evidenced by Certificate 47936 is supplemental to a primary irrigation surface water right evidenced by Certificate 47941.
9. The portion of the first primary surface right to be exercised as a supplemental water right under the substitution is as follows:

**Certificate:** 34192 in the name of RALPH A AND MARIAN B JACK (perfected under Permit S-27924)

**Use:** IRRIGATION of 13.5 ACRES

**Priority Date:** NOVEMBER 28, 1961 AND APRIL 11, 1962

**Rate:** 0.17 CUBIC FOOT PER SECOND (CFS), BEING 0.11 CFS WITH A PRIORITY DATE OF NOVEMBER 28, 1961 AND 0.06 CFS WITH A PRIORITY DATE OF APRIL 11, 1962

**Limit/Duty:** ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** JEFF CREEK, tributary to SILVER CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	1 E	WM	3	SE SW	1270 FEET NORTH AND 1720 FEET EAST FROM THE SW CORNER OF SECTION 35.

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 E	WM	34	SE SE	6.4
8 S	1 E	WM	3	NE NE	7.1

10. The second primary surface right to be exercised as a supplemental water right under the substitution is as follows:

**Certificate:** 36093 in the name of RALPH A AND MARIAN B JACK (perfected under Permit S-32756)

**Use:** IRRIGATION of 13.8 ACRES

**Priority Date:** JULY 14, 1967

**Rate:** 0.17 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** JEFF CREEK, tributary to SILVER CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	1 E	WM	35	SE SW	1270 FEET NORTH AND 1720 FEET EAST FROM THE SW CORNER OF SECTION 35.

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	1 E	WM	3	NE NE	13.8

11. The portion of the third primary surface water right to be exercised as a supplemental water right under the substitution is as follows:

**Certificate:** 47941 in the name of ROBERT N. AND MARLENE A. JACK (perfected under Permit S-39555)

**Use:** IRRIGATION of 1.9 ACRES

**Priority Date:** JUNE 25, 1975

**Rate:** 0.01 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** JEFF CREEK, tributary to SILVER CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	1 E	WM	35	SE SW	1270 FEET NORTH AND 1720 FEET EAST FROM THE SW CORNER OF SECTION 35.

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	1 E	WM	2	NW NW	4	1.9

12. The portion of the first supplemental ground water to be exercised as a primary water right is as follows:

**Certificate:** 36092 in the name of RALPH A. AND MARIAN B. JACK (perfected under Permit G-3812)

**Use:** SUPPLEMENTAL IRRIGATION of 27.3 ACRES

**Priority Date:** SEPTEMBER 16, 1967

**Rate:** 0.144 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL in the JEFF CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	1 E	WM	3	NE NE	520 FEET SOUTH AND 70 FEET WEST FROM THE NE CORNER OF SECTION 3.

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 E	WM	34	SE SE	6.4
8 S	1 E	WM	3	NE NE	20.9

13. The portion of the second supplemental ground water to be exercised as a primary water right is as follows:

**Certificate:** 47936 in the name of ROBERT N. AND MARLENE A. JACK (perfected under Permit G-6370)

**Use:** SUPPLEMENTAL IRRIGATION of 1.9 ACRES

**Priority Date:** JUNE 25, 1975

**Rate:** 0.01 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL in the SILVER CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	1 E	WM	3	NE NE	1	520 FEET SOUTH AND 70 FEET WEST FROM THE NE CORNER OF SECTION 3.

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	1 E	WM	2	NW NW	4	1.9

14. Notice of the substitution application was published in the Department's weekly notice on February 29, 2000 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

15. Notice of the substitution was published in the Silverton Appeal-Tribune on March 15, 22, and 29, 2000, pursuant to ORS 540.520 and OAR 690-380-4000. No protests were filed in response to the notice.
16. Notice of the substitution and transfer application was published in the Department's weekly notice on August 12, 2003 pursuant to ORS 540.520 and OAR 690-380-4000. The Department accepted three protests that were filed in response to the notice.
17. On September 9, 2003, a protest was received from David T. Wasser, 19593 De Santis Lane SE, Silverton, Oregon, 97381.
18. On September 9, 2003, a protest was received from Diane Price, 19542 Jack Lane SE, Silverton, Oregon, 97381.
19. On September 10, 2003, a protest was received from Roberta Lyons, 1891 Silver Falls Drive SE, Silverton, Oregon, 97381.

### ***Transfer Review Criteria (OAR 690-380-4010)***

20. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
21. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights is present.
22. The proposed changes would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.

### **Determination and Proposed Action**

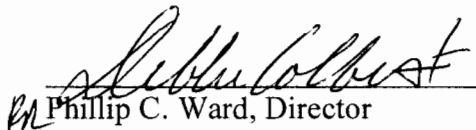
The proposed additional point of appropriation and substitution of a supplemental right from a ground water source for primary water rights from a surface source proposed in application T-8441 appear to be consistent with the requirements of ORS 540.524, 537.705, 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that all protests are resolved.

*If all protests are resolved and application T-8441 is approved, the final order will include the following:*

1. *The proposed substitution between ground water and surface water rights shall be effective upon approval of the final order.*
2. *The additional point of appropriation proposed in application T-8441.*
3. *Water Right Certificates 36092 and 47936 are cancelled. New certificates will be issued to confirm those portions of these rights not affected by this transfer.*

4. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 36092, 34192, 36093, 47941, and 47936, and any related decree.*
5. *The approved additional point of appropriation shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
6. *The quantity of water diverted at the proposed additional point of appropriation, together with that diverted at the authorized point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
9. *The substitution of a supplemental right from a ground water source for primary water rights from surface source may be terminated upon a request by the water right holder or by order of the Director if the Director determines that the use of the ground water as primary irrigation causes injury. Upon termination, the substituted primary and supplemental water rights shall revert to their original status.*
10. *When satisfactory proof of the completed additional point of appropriation is received, new certificates confirming the rights described by Certificates 36092 and 47936 transferred will be issued.*

Dated at Salem, Oregon this 4<sup>th</sup> day of June 2007.

  
Phillip C. Ward, Director

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1266.

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us.